

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

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TERA. A. McMILLAN

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DEBRA P. HACKETT CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Plaintiff

*

vs.

*

**ALABAMA DEPARTMENT OF YOUTH
SERVICES and MICHAEL J. HARDY**

*

Defendants

*

Case No: 2:07: CV-01-WKW

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**MOTION TO QUASH SUBPOENA OR IN THE ALTERNATIVE
MOTION FOR PROTECTIVE ORDER**

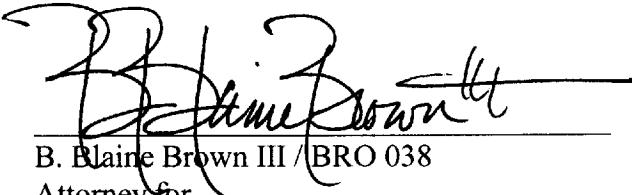
COMES NOW The Health Care Authority for Baptist Health, An Affiliate of UAB Health System, D/B/A Baptist Medical Center South d/b/a Meadhaven, Montgomery, Alabama, by and through counsel, and moves this Honorable Court for an Order quashing the Subpoena issued by defendant Alabama Department of Youth Services, Legal Division herein, and for grounds would state as follows:

1. The patient, Tera A. McMillian's, psychiatric/psychological records for an admission is, pursuant to §22-50-62 and §34-26-2 of the Code of Alabama, 1975, protected under Alabama law.
2. That the aforementioned statutes expressly require that disclosure be made only where, "... a court of competent jurisdiction shall order disclosure for the promotion of justice . . ."
3. As a result, the issuance of a Rule 45 Subpoena is not sufficient to obtain the requested psychiatric/psychological records.
4. That the subpoena fails to satisfy the federal requirements of the Health Insurance Portability and Accountability Act ("HIPAA") contained in 45 CFR Section 164.512(e).

WHEREFORE, The Health Care Authority for Baptist Health, An Affiliate of UAB Health System, D/B/A Baptist Medical Center South d/b/a Meadhaven would respectfully request that this Honorable Court quash the Subpoena issued by defendant Alabama Department of Youth Services, Legal Division, for the psychiatric/psychological records of **Tera A. McMillian**, or in the alternative that this Court hold such hearings or inquiry as it may deem necessary to determine the necessity of the disclosure of such records. Should the Court, following such hearing/inquiry, determine that a need exists to allow such records into evidence, that an Order be issued directing the release of such

records, specifying the extent of the psychiatric/psychological records to be released, directing the use and limits of disclosure of the information contained in such records, and providing the assurances required by HIPAA as set forth in 45 CFR Section 164.512(e).

Respectfully submitted this 22nd day of February 2008.



B. Blaine Brown III / BRO 038
Attorney for

The Health Care Authority for Baptist Health,
An Affiliate of UAB Health System

Of Counsel:

B. Blaine Brown III

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Baptist Health

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Quash Subpoena Or In the Alternative Motion for Protective Order was served on the attorney for the defendant, by placing same in the United States mail, postage prepaid, on this the 22nd day of February 2008.

T. Dudley Perry, Jr.

General Counsel

Alabama Department of Youth Services

Post Office Box 66

Mt. Meigs, Alabama 36057



B. Blaine Brown III

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Plaintiff

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PROTECTIVE ORDER

This matter having come before the Court on a Motion to Quash a Subpoena for psychiatric/psychological records, and testimony having been taken and the Court having noted that the procedural requirements had been met and that good and sufficient clause for release of said records has been made, it is therefore:

ORDERED, that The Health Care Authority for Baptist Health, An Affiliate of UAB Health System D/B/A Baptist Medical Center South d/b/a Meadhaven, Montgomery, Alabama is hereby directed to release to the defendant the psychiatric/psychological records of *Tera A. McMillan* herein.

It is further **ORDERED** that said records shall be used only in the defense of this case and that there shall be no public or other disclosure of this information except to those participating in the preparation of or testimony in this case and who have a need to know such information.

It is further **ORDERED** that said records and information either be returned to the covered entity or be destroyed (including all copies made) at the end of the litigation proceeding as required under 45 CFR Section 164.512(e).

DONE this _____ day of _____, 2008.

Judge

T. Dudley Perry, Jr. - *Alabama Department of Youth Services*
B. Blaine Brown III - *Baptist Health*